

Message Text

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O R 301139Z JUL 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 0217
INFO USMISSION USBERLIN
AMEMBASSY BERLIN
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AMEMBASSY PARIS
USMISSION NATO

C O N F I D E N T I A L SECTION 1 OF 4 BONN 12504

E.O. 11652: GDS
TAGS: PGOV BQG
SUBJECT: TRIAL OF LORENZ/DRENCKMANN TERRORISTS IN BERLIN:
ROLE OF FRG FEDERAL PROSECUTOR

REFS: (A) USBER 1978; (B) STATE 177700; (C) BONN 12441;
(D) BONN 12426; (E) 76 STATE 166421;
(F) 76 BONN 12111

SUMMARY. IN A JULY 29 TRIPARTITE MEETING OF ALLIED BONN
GROUP REPS, THE FRENCH (ON INSTRUCTIONS FROM PARIS) ASKED
OUR REACTION TO A POSSIBLE BAN ON HOLDING THE TRIAL IN
BERLIN. BOTH US AND UK REPS REPLIED THAT THEY THOUGHT
THEIR CAPITALS WOULD NOT APPROVE OF SUCH A STEP. FRENCH
REP SAID THAT PARIS WOULD NOT BE HAPPY WITH THE REPORT OF
THE MANNER IN WHICH OFFICIALS FROM THE KARLSRUHE OFFICE
OF THE PUBLIC PROSECUTOR WILL BE DETAILED TO BERLIN AND
THAT HE COULD NOT RECOMMEND USE OF THE BONN GROUP AD REF
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PRESS GUIDANCE WITHOUT SOMETHING MORE. THE "MORE"
WOULD BE TO HAVE THE AK ISSUE A FORMAL PUBLIC STATEMENT,
WHICH WOULD CARRY GREATER WEIGHT THAN A STATZMENT MADE IN
ANSWER TO PRESS QUERIES. THE US REP SAID HIS INSTRUC-
TIONS WOULD NOT PERMIT THIS. THE UK REP SAID THAT IF THE
FRENCH WERE NOT PREPARED TO AGREE TO THE ISSUANCE OF A
PRESS STATEMENT BY JULY 30, WHICH RICHARD CONFIRMED THEY

WERE NOT, WE WOULD HAVE TO WAIT TO SEE THE CONTENT OF THE SOVIET DEMARCHES WHICH HAVE BEEN MADE IN LONDON AND PARIS SINCE ANY AK OR OTHER FORMAL STATEMENT WOULD NECESSARILY BE SEEN AS A REACTION TO THE DEMARCHES. THE BRITISH DID NOT RAISE (NOR DID WE) THE POSSIBILITY OF HAVING THE FRG WITHDRAW THE INDICTMENT AND REISSUE IT OVER THE NAME OF AN OFFICIAL PERMANENTLY ASSIGNED TO BERLIN. WE BELIEVE THAT THE SOVIET REACTION HAS BEEN EXACERBATED BY THE INDISCREET FRG AND SENAT STATEMENTS OF THE LAST FEW DAYS AND, IF THE MESSAGE OF ALLIED UNHAPPINESS HAS NOT GOTTEN THROUGH TO THE FRG, WE WILL CONSIDER OTHER POSSIBLE METHODS (E.G., HIGH-LEVEL DEMARCHES TO THE FRG OR ALLIED STATEMENTS) IN AN ATTEMPT TO DIMINISH THE FRG PRESS TREATMENT OF THIS MATTER. END SUMMARY.

1. ALLIED BONN GROUP REPS MET JULY 29 AT FRENCH REQUEST. FRENCH REP (RICHARD) BEGAN BY SAYING THAT HE HAD BEEN ASKED TO SEEK UK AND US VIEWS ABOUT A POSSIBLE ALLIED BAN OF THE PROSECUTION IN BERLIN. US REP SAID THAT, WHILE WE HAVE NO RECENT INSTRUCTIONS ON THIS MATTER, HE THOUGHT THE DEPARTMENT WOULD TAKE THE POSITION IT DID IN JULY OF LAST YEAR; HE READ PARAGRAPH 2 OF REF (E). THAT INSTRUCTION SAID THAT THE DEPARTMENT BELIEVED THAT CONSIDERATION OF THE INEVITABLE SOVIET NEGATIVE REACTION IS OUTWEIGHED BY THE US LEGAL POSITION THAT THE FEDERAL CONFIDENTIAL

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PROSECUTION IS CONSISTENT WITH THE QA AND THAT TO BLOCK IT WOULD BE VIEWED BY THE FRG AS ALLIED WILLINGNESS TO CHANGE THE EXISTING SITUATION IN BERLIN AS A RESULT OF SOVIET PRESSURE.

2. UK REP (EYERS) FULLY AGREED, SAYING THAT TO BAN THE TRIAL NOW WOULD BE DIFFICULT TO DEFEND, ESPECIALLY IN VIEW OF THE GERMAN PUBLIC EXPECTATION THAT THE TRIAL WILL TAKE PLACE IN BERLIN. IF THE TRIAL IS ILLEGAL, IT SHOULD HAVE BEEN BANNED BEFORE NOW. IT IS IMPOSSIBLE TO MAKE A CHANGE IN THE ARRANGEMENTS ALREADY MADE WITHOUT A POLITICAL ROW.

3. RICHARD THEN SAID THAT PARIS WAS OF THE IMPRESSION THAT WHEN THE ALLIED NON-PAPER WAS DELIVERED IN JULY 1976, THE ALLIES HAD TOLD THE FRG THAT IT MIGHT BE NECESSARY TO FORBID THE TRIAL. THE US REP SAID THAT THE US REPORTING TELEGRAM (REF F) ON THE NON-PAPER DID NOT REFLECT SUCH A STATEMENT. EYERS ADDED THAT THERE MAY HAVE BEEN DISCUSSION OF THIS POSSIBILITY EARLIER IN THE YEAR, BUT NOT AT THE TIME THE NON-PAPER WAS DELIVERED. IN ANY CASE, SUCH A STATEMENT WOULD HAVE BEEN INCON-

SISTENT WITH THE AGREED POSITION THAT THE TRIAL WAS
LEGAL.

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4. RICHARD THEN ASKED THE UK AND US REACTION TO THE
MANNER IN WHICH MEMBERS OF THE PROSECUTOR'S OFFICE HAVE
BEEN DETAILED TO BERLIN (REF C). EYERS SAID THAT THIS
WAS APPARENTLY THE ONLY WAY THEY COULD HAVE BEEN
DETAILED. THE UK RECOLLECTION IS THAT AT THE TIME THE
NON-PAPER WAS DRAFTED, THERE WAS A GREAT DEAL OF
DISCUSSION ABOUT THE QUESTION OF WHO WAS TO PROSECUTE
IN BERLIN. THE ALLIES REALIZED AT THAT TIME THAT THERE
WAS NO HOPE THAT THE STAFF RESIDENT IN BERLIN (ALLEGEDLY
NONE OF WHOM ARE TRIAL LAWYERS) COULD EFFECTIVELY
PROSECUTE THE CASE. THEREFORE, IT WAS INEVITABLE THAT
THE STAFF WOULD BE DRAWN FROM KARLSRUHE. WHAT IS
IMPORTANT NOW IS FOR THE FRG TO STATE PUBLICLY THAT THE
OFFICIALS ARE BEING DETAILED, I.E., THAT THEY WILL BE
PART OF THE BERLIN OFFICE. THE FACT THAT THE ONLY OFFICE
OF THE FEDERAL PROSECUTOR OUTSIDE OF KARLSRUHE IS IN
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BERLIN IS A RECOGNITION OF BERLIN'S SPECIAL STATUS.

5. THE US REP AGREED WITH EYERS' REMARKS AND SAID THAT OUR UNDERSTANDING OF WHAT WAS SAID LAST YEAR ABOUT THE NEED FOR DETAILING PERSONNEL TO BERLIN WAS THE SAME.

6. THE UK REP SAID THAT THE PURPOSE OF THE NON-PAPER WAS TO GIVE THE ALLIES SOME PROTECTION AGAINST A SOVIET PROTEST. HOWEVER, THE HOLES IN THE NON-PAPER WERE LARGE ENOUGH FOR THE GERMANS TO SLIP THROUGH "AND SLIP THROUGH THEY DID." HE SAID THAT HE DOES NOT BELIEVE THAT THIS CALLS FOR A MEASURE AS SIGNIFICANT AS BANNING THE TRIAL BY A BK/O. HOWEVER, WE SHOULD THINK HARD ABOUT WHAT WE WANT TO ASK THE FRG TO DO AND WHAT WE CAN DO. ONE POSSIBILITY, HE CONCLUDED, WOULD BE PUBLIC STATEMENTS BY BOTH THE FRG AND THE ALLIES. THAT WAS THE REASON THE UK WAS IN FAVOR OF AN IMMEDIATE ALLIED PRESS STATEMENT TO BE USED IN RESPONSE TO THE INQUIRIES SUCH AS THOSE THE UK HAS HAD.

7. RICHARD SAID THAT PARIS' INSTRUCTIONS WERE SENT BEFORE RECEIPT OF THE INFORMATION REGARDING THE MANNER OF DETAILING OFFICIALS TO BERLIN (REF C). HE SAID THAT PARIS WOULD NOT BE PLEASED BY THIS NEW DEVELOPMENT AND THAT HE COULD NOT RECOMMEND THE PRESENTLY PROPOSED PRESS GUIDANCE (REF D) TO PARIS WITHOUT HAVING SOMETHING MORE TO OFFER. HE WISHED TO PROPOSE THAT, INSTEAD OF SIMPLY RESPONDING TO PRESS QUERIES, THE ALLIED KOMMANDATURA (AK) SHOULD ISSUE A FORMAL STATEMENT WHICH WOULD CARRY MORE WEIGHT. THE AK STATEMENT COULD NOTE ("CONSTATER") THAT THE OFFICIALS BEING DETAILED TO BERLIN BELONG TO THE OFFICE OF THE FEDERAL PROSECUTOR IN BERLIN. HE SAID THAT THIS WAS NOT DONE IN CONNECTION

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WITH THE TRIAL OF THE TERRORIST MAHLER IN 1972-73 BUT THAT IT WOULD BE CONSISTENT WITH OUR PRIOR UNDERSTANDING REGARDING THE LORENZ CASE. THIS FORMALITY COULD BE KEPT CONFIDENTIAL BY ISSUING IT AS A BK/L RATHER THAN A BK/O.

8. EYERS ASKED WHY A BK/L WOULD BE USED, SINCE ONLY A PUBLIC DOCUMENT (E.G., A BK/O) WOULD BE HELPFUL IN TERMS OF DEFENDING OUR ACTION VIS-A-VIS THE SOVIETS. IF WE WANT CONFIRMATION OF THE ASSIGNMENT OF PERSONNEL TO

BERLIN, WE CAN ASK FOR A COPY OF THE FORMAL LETTER OF ASSIGNMENT. IT WOULD HAVE BEEN MOST HELPFUL IF SUCH ASSIGNMENTS WERE PUBLICLY GAZETTED BUT, SINCE WE HAVE BEEN TOLD THEY ARE NOT, THE BEST ALTERNATIVE WOULD BE A PUBLIC STATEMENT BY AN FRG SPOKESMAN SAYING THAT THEY HAVE BEEN DETAILED TO BERLIN BECAUSE THEY CAN ONLY FUNCTION IN BERLIN AS MEMBERS OF THE BERLIN OFFICE.

9. THE US REP SAID EITHER A BK/L OR A BK/O FOR THIS PURPOSE HAD CERTAIN IMPLICATIONS WHICH SHOULD BE CONSIDERED. IF THIS ROUTE IS USED, THE SOVIETS MIGHT CHOOSE TO REGARD IT AS A CONDITION PRECEDENT TO THE ASSIGNMENT OF ALL PERSONNEL TO BERLIN AND THERE ARE THOUSANDS OF FEDERAL EMPLOYEES THERE. WHILE THE USE OF A BK/O OR BK/L WOULD NOT PERSUADE THE SOVIETS THAT THE PRESENCE OF SUCH FRG EMPLOYEES IN BERLIN WAS LEGAL, IT WOULD GIVE THEM AN ARGUMENT THAT THE ILLEGALITY WAS EVEN MORE PATENT BECAUSE WE HAD FAILED TO OBSERVE EVEN OUR OWN "PRACTICES." HE SAID IT IS IMPORTANT TO DISTINGUISH BETWEEN THE LEGAL AND THE PRESENTATIONAL STEPS WE DEEM NECESSARY AND DESIRABLE FOR THIS TRIAL. WE SUPPOSEDLY DO NOT NEED ADDITIONAL LEGAL AUTHORITY SINCE OUR POSITION, WITH WHICH PARIS PRESUMABLY AGREES, IS THAT THE

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TRIAL IS LEGAL. THE USE OF A LEGAL INSTRUMENT SUCH AS A BK/O OR BK/L TENDS TO MIX THE LEGAL AND PRESENTATIONAL POINTS IN A MANNER IN WHICH A PRESS STATEMENT DOES NOT.

10. THE US REP ALSO SAID THAT HIS INSTRUCTIONS (REF B) DID NOT PERMIT HIM TO AGREE TO A FORMAL AK OR OTHER ALLIED STATEMENT, AS OPPOSED TO A PRESS STATEMENT IN RESPONSE TO INQUIRIES. HE SAID THAT WHILE THE REASON GIVEN BY THE DEPARTMENT IN REF (B) -- I.E., THAT SUCH A STATEMENT WOULD DRAW ADDED ATTENTION TO THE MATTER -- MAY HAVE BEEN OVERTAKEN BY THE FLURRY OF PRESS ARTICLES IN THE LAST FEW DAYS, AN ADDITIONAL REASON CONVEYED TO HIM INFORMALLY JUST BEFORE THE MEETING HAD CONTINUING VALIDITY. THAT IS THAT, WHILE A PRESS STATEMENT IS NECESSARILY INFORMAL, THE LANGUAGE OF A FORMAL STATEMENT MUST BE CONSIDERED VERY CAREFULLY SINCE IT IS A CONFIDENTIAL

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STATEMENT OF OUR LEGAL POSITION.

11. RICHARD DEMURRED, SAYING THAT WHATEVER WE SAY TO THE PRESS NOW INFORMALLY WILL COMMIT THE ALLIES TO A POSITION TO BE TAKEN IN A LATER MORE FORMAL STATEMENT.

12. EYERS SAID THAT IF THE FRENCH ARE NOT ABLE TO AGREE TO A PRESS STATEMENT WITHIN THE NEXT 24 HOURS, WE MUST GO BACK TO THE DRAWING BOARD. SINCE THE SOVIETS HAVE ALREADY MADE DEMARCHES IN LONDON AND PARIS ON THIS MATTER, IT WILL BE NECESSARY TO THINK MORE DEEPLY ABOUT THE CONTENT OF AN AK STATEMENT SINCE IT WILL NECESSARILY BE SEEN AS A RESPONSE TO THE SOVIET DEMARCHES. THEREFORE, WE MUST KNOW THE CONTENT OF THE SOVIET DEMARCHES BEFORE EVEN CONSIDERING A DRAFT. RICHARD SAID THAT THE FRENCH CANNOT AGREE TO USING THE PRESENT DRAFT PRESS GUIDANCE, AND THE MEETING WAS ADJOURNED.

13. WE HAVE BEEN TOLD THAT A SENIOR DIPLOMAT (RICHARD IS NOT CERTAIN WHICH ONE) FROM THE SOVIET EMBASSY IN PARIS CALLED ON SECRETARY GENERAL SOUTOU AT THE QUAI JULY 28 TO PROTEST HOLDING THE TRIAL IN BERLIN. LONDON HAS REPORTED THAT SOVIET CHARGE SEMENOV CALLED ON MINISTER OF STATE JUDD JULY 29 AND DESCRIBED THE TRIAL AS A VIOLATION OF THE QA, FRAUGHT WITH GRAVE CONSEQUENCES AND NOT GIVEN TO MAINTAINING THE NORMAL SITUATION IN AND AROUND BERLIN. JUDD REPLIED ALONG THE LINES OF THE DRAFT PRESS STATEMENT (REF D), WHICH

SEMENOV SAID HE CONSIDERED AN UNSATISFACTORY ANSWER.

14. COMMENT: WE ARE NOW AT AN IMPASSE WITH THE FRENCH
OVER SAYING ANYTHING TO THE PRESS. BECAUSE A FLAT
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"NO COMMENT" IS INADEQUATE AT THIS POINT, WE PLAN TO
EMBELLISH IT IN RESPONDING TO QUERIES HERE WITH THE
EXPLANATION THAT, SINCE THIS IS A JUDICIAL
PROCEEDING, WE WISH TO CONSIDER VERY CAREFULLY WHAT TO
SAY. WE WILL ADD THAT ANY PROCEEDINGS IN BERLIN WILL BE
IN ACCORDANCE WITH THE LAW IN FORCE IN BERLIN.

15. WE RECEIVED REF (A) SHORTLY BEFORE THE MEETING AND
ENVY THE BERLIN MISSIONS' ABILITY TO DIRECT THE SENAT
TO KEEP QUIET -- A DEGREE OF FREEDOM WE DO NOT HAVE.
WITH RESPECT TO PARAGRAPH 4 OF REF (A), EYERS DID NOT
RAISE THE POSSIBILITY OF HAVING THE FRG WITHDRAW THE
INDICTMENT AND ISSUE A NEW ONE UNDER THE SIGNATURE OF
SOMEONE PERMANENTLY ASSIGNED TO THE BERLIN FEDERAL
PROSECUTOR'S OFFICE. WE DID NOT RAISE IT, FOR FEAR THAT
THE FRENCH MIGHT SEIZE UPON THE IDEA BEFORE IT HAD BEEN
CONSIDERED THOROUGHLY. WHILE WE FULLY AGREE THAT THE
PERFORMANCE OF THE FRG AND THE SENAT HAS BEEN LESS THAN
FULLY COOPERATIVE AND MORE THAN SOMEWHAT INDISCREET, WE
HAVE DOUBTS ABOUT THE ADVISABILITY OF SUCH A DIRECT
ALLIED INTERVENTION IN THE PROCEEDINGS. WHILE IT
MIGHT GIVE US SOME SLIGHT ADVANTAGE IN RESPONDING TO THE
SOVIETS, IT IS QUESTIONABLE WHETHER THEIR FUNDAMENTAL
OBJECTIONS TO HOLDING THE TRIAL IN BERLIN WOULD BE
SIGNIFICANTLY LESSENED BY A DIFFERENT SIGNATURE ON THE
INDICTMENT.

16. THERE WOULD BE SERIOUS POLITICAL FALLOUT IN THE FRG
AND BERLIN, AND IN ADDITION AN ALLIED REQUIREMENT THAT
THE INDICTMENT BE REISSUED WOULD BE SEEN AS INDICATING
THAT WE HAVE DOUBTS ABOUT THE LEGAL AUTHORITY OF KAUL TO
SIGN THE INDICTMENT. SUCH DOUBTS WERE NOT INCLUDED
AMONG THE REASONS ADVANCED FOR USBER FOR ENDORSING THE
BRITISH SUGGESTION, AND SO FAR AS WE ARE AWARE THERE

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IS IN FACT NO QUESTION ABOUT KAUL'S AUTHORITY UNDER THE
LAW IN FORCE IN BERLIN. TO ORDER THAT THE INDICTMENT
BE WITHDRAWN WOULD THUS BE CONFUSING THE POLITICAL WITH
THE LEGAL ISSUES AND CASTING DOUBT ON THE LEGALITY OF
THE PROCEEDINGS THUS FAR -- SOMETHING THAT IS NOT IN THE
ALLIED INTEREST.

17. THERE IS NO QUESTION THAT THE MATTER HAS BEEN
HANDLED BADLY AND THAT THE PRESS ATTENTION WHICH IT HAS
RECEIVED THUS FAR HAS EXACERBATED THE SOVIET
REACTION. ALLIED VIEWS HAVE BEEN MADE CLEAR BOTH HERE
AND IN BERLIN, AND WE HAVE RECEIVED FRESH ASSURANCES
OF DISCRETION. AT THIS POINT, WE BELIEVE THAT WE
SHOULD WAIT A REASONABLE TIME TO SEE WHETHER THE NEW
PROSECUTOR GENERAL HAS RECEIVED AND UNDERSTOOD THE
MESSAGE. WHILE IT IS TOO EARLY TO EXPRESS SATISFACTION
ON THAT SCORE, WE HAVE NOTED NO FRESH STATEMENTS
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EMANATING FROM HIM OR HIS OFFICE SINCE THE ALLIES TOOK

UP THE MATTER WITH THE FOREIGN OFFICE AT THE BEGINNING
OF THE WEEK. SHOULD THERE BE FURTHER PROBLEMS, WE
DO NOT EXCLUDE THE NEED FOR MORE DIRECT ALLIED ACTION,
INCLUDING POSSIBLY PUBLIC STATEMENTS BY THE AK AND HIGH
LEVEL ALLIED DEMARCHES HERE IN BONN.

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Message Attributes

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